

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

Application of

21 AIR, LLC

For a certificate of public convenience  
and necessity pursuant to 49 U.S.C. §  
41102 (interstate charter cargo air  
transportation)

Docket DOT-OST-2015-0044

Application of

21 AIR, LLC

For a certificate of public convenience  
and necessity pursuant to 49 U.S.C. §  
41102 (foreign charter cargo air  
transportation)

Docket DOT-OST-2015-0043

MOTION FOR LEAVE TO FILE AND REPLY OF 21 AIR, LLC

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March 11, 2022

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21 Air, LLC (“21 Air”) submits this brief reply<sup>1</sup> only to clarify a few specific points of Department of Transportation (“Department” or “DOT”) procedure and precedent referenced in the Air Line Pilots Association, International (“ALPA”) response.<sup>2</sup> 21 Air welcomes the Department’s ongoing, thorough review, which is conducted on an informal basis and is the regular

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<sup>1</sup> To the extent required, 21 Air respectfully seeks leave from the Department to accept this filing pursuant to 14 CFR § 302.6(c). Good cause exists to permit the filing of this reply to correct the record.

<sup>2</sup> Response of ALPA to Motion to Dismiss of 21 Air, LLC, OST-2015-0043/OST-2015-0044 (March 2, 2022) (“ALPA Response of March 2, 2022”).

process contemplated by DOT procedures.<sup>3</sup> The Department's process does not "short circuit"<sup>4</sup> 14 CFR § 385.30 or any other of the Department's regulations. ALPA would have the exception of formal review swallow the general rule of informal review.

The Department has already rejected this line of thinking, including as specifically advanced by ALPA. Where "ALPA ... argue[d] that the [the Department] should subject all substantial foreign investment cases to public notice and comment,"<sup>5</sup> the Department "determined to continue following [its] existing procedures for continuing fitness reviews for the reasons stated in [its] earlier notices."<sup>6</sup> These reasons included that formal proceedings are "extremely burdensome on the affected air carriers"<sup>7</sup> and that "requiring public notice and comment ... appear[s] to be unnecessary for the protection of interested persons," such as the carrier's pilots, who retain the right to submit evidence under Department rules.<sup>8</sup>

Likewise, ALPA's reliance on the *DHL Airways* case is misplaced. In that case, the Department only initiated formal review of the citizenship of DHL Airways, Inc. when Congress

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<sup>3</sup> See 14 CFR § 204.5.

<sup>4</sup> ALPA Response of March 2, 2022 at 1.

<sup>5</sup> Supplemental NPRM regarding Actual Control of U.S. Air Carriers, 71 Fed. R. 26436 (May 5, 2006), OST-2003-15759 (May 3, 2006).

<sup>6</sup> See Final Rule, Fr. Doc. E7-7605 (April 16, 2007), OST-2003-15759 (April 20, 2007).

<sup>7</sup> Supplemental NPRM regarding Actual Control of U.S. Air Carriers, 71 Fed. R. 26436 (May 5, 2006), OST-2003-15759 (May 3, 2006) (referring to NPRM at 70 Fed. R. 67392 (November 7, 2005)).

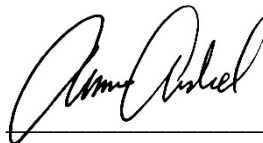
<sup>8</sup> *Id.*

took the extraordinary step of expressly directing it to do so.<sup>9</sup> It was not the petitions of FedEx and UPS that triggered this exceptional review, as ALPA incorrectly claims.<sup>10</sup>

Finally, ALPA suggests that the Department's ability to review 21 Air's fitness would be "cut off" if ALPA's petition is dismissed.<sup>11</sup> The Department has the authority to review 21 Air's continuing fitness with or without ALPA's petition. 21 Air looks forward to the efficient resolution of this matter and remains ready and willing to respond to any of the Department's queries concerning its ongoing fitness consistent with its long-standing procedures and precedent.

WHEREFORE, for the reasons set forth in 21 Air's Motion to Dismiss and as described above, 21 Air respectfully reiterates its request that the Department dismiss ALPA's petition and continue its review of 21 Air's fitness on an informal basis in the ordinary course of business.

Respectfully submitted,



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<sup>9</sup> Order Instituting Formal De Novo Review, OST-2002-13089 (April 17, 2003) ("In § 2710 of P.L. 108-11, Congress directed the Department to use an Administrative Law Judge (Law Judge) in a formal proceeding to resolve this docket, Docket OST-2002-13089."); P.L. 108-11, § 2710 (April 16, 2003).

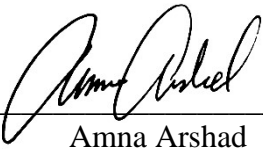
<sup>10</sup> ALPA Response of March 2, 2022, at 3.

<sup>11</sup> Response of ALPA to Motion to Dismiss of 21 Air, LLC at 5, OST-2015-0043/OST-2015-0044 (March 2, 2022) ("ALPA Response of March 2, 2022").

## **CERTIFICATE OF SERVICE**

I certify that I have this date served the foregoing document on the following persons by causing a copy to be sent electronically in accordance with the Department's Rules of Practice:

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March 11, 2022